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At the same time the treatment is not elementary in character, but sufficiently comprehensive to entitle the work to an acceptable place in the lawyer's library.

The author defines Due Process of Law, as implying the administration of established rules, not violative of the fundamental principles of private right, by a competent tribunal having jurisdiction of the case and proceeding upon notice and hearing. The most casual thought discloses at once that though some degree of definiteness is to be found in this definition, in most important respects it is general and indefinite. This Mr. McGehee freely admits, pointing out that courts have wisely refused to bind themselves to hard and fast tests, but by the "process of judicial inclusion and exclusion" have developed some certainty in important specific instances in which the protection of the due process clause has been invoked. Obviously, with changing conditions, new considerations for the application or non-application of the constitutional limitations will arise, and there is probably no other clause in the Federal Constitution, whose possible operation can be less certainly predicted. It is therefore to be expected that the rules which have been established shall be sufficiently general to allow the courts to decide cases of novel impression unhampered by criteria ascertained before the case in question was thought of.

With this underlying theory the subject is then discussed under the divisions heretofore indicated. The cases are analyzed and classified with but little favorable or adverse comment thereon, though occasionally with an interesting prevision as to their possible tendency. To *Haddock v. Haddock*, however, the author in his preface gives severe criticism. But this case has been subjected to so much comment favorable and adverse that it seems unnecessary to refer in this review more at length to the criticism accorded it in this book.

Mr. McGehee's work not only deserves praise for itself, but leads us to look with interest for new books in this series.

H. W. B.

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THE LAW GOVERNING NUISANCES; with Particular Reference to its Application to Modern Conditions and covering the Entire Law Relating to Public and Private Nuisances, Including Statutory and Municipal Powers and Remedies, Legal and Equitable. By JOSEPH A. JOYCE and HOWARD C. JOYCE. Albany; Matthew Bender & Co. 1906. Pp. cvi. 866.

In view of the increasing complexity of modern life, the established rules of law are constantly finding new application, but this form of legal development is much more dis-

tinctly noticeable in some than in other divisions of the law. It finds special illustration in the case of the law of Nuisance, depending as this law largely does on the proper understanding and application of the maxim *sic utere tuo* &c. in solving the rights of individuals as members of an organized community. It is with due regard to this important fact that this book has been written, and its satisfactory character attests the care and accuracy of the author's work.

The book is distinctly a book for the profession rather than for the law student. It presents in orderly fashion, each chapter complete in itself, the principles of law falling within the subject of the chapter, fortified by numerous authorities collected in the footnotes. The effort is made to have the principle in the text summarize the cases cited in the notes, so that in relatively few instances are the cases analyzed with respect to the facts upon which the decision is rendered. This we cannot but regard as detracting from the general merit of the work.

After introductory chapters in which Nuisances are defined and classified, and the fundamental and general principles of the subject analyzed, there follows a discussion of prescriptive right, and legalized and statutory nuisances. Then the different kinds of nuisance are considered in order *e. g.* the various forms of business which may become nuisances, smoke, fumes, gases, smells, noises, jars, vibrations, animals, &c. Particular attention is given to nuisances affecting highways and waters—and wisely so, since it is here that there is more distinctly in evidence the increasing number of decisions applying the principles of the law of nuisance. Following these topics a chapter is devoted to municipal powers and liabilities, and the work is concluded by a study of the remedies, legal and equitable, the parties entitled, defenses and damages. To these last matters ample consideration is given, and excellent judgment has been shown in the adequacy of their treatment.

The authors have recognized the increasing part that legislative action (State and municipal) is taking in respect to this part of the law, and as well in the chapter on legalized nuisance as in that on the powers and liabilities of municipal corporations, care has been taken to work out fully the most modern phases of the application of the principles of legal development here at work. In the latter chapter, after pointing out the nature of municipal authority as a form of state activity through a subordinate agency and its consequent limitation in view of its delegated character, the authors consider the extent of the power over nuisances when delegated, how far certain forms of business may be

declared nuisances, how far they may be regulated, what action may be taken with respect to structures and in general under what circumstances and in what manner nuisances when found to be such may be dealt with. A mere reference to the topics considered reveals their present-day importance and evidences what is true throughout the book, that the authors have realized the need for a treatise on this subject which shall be written with full appreciation of existing conditions. This need they have met in this book, which is certain to prove of practical value to the legal profession.

*H. W. B.*

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THE LAW OF HOMICIDE. By FRANCIS WHARTON, LL. D. Third Edition, by FRANK H. BOWLBY, of the Publishers' Editorial Staff. Rochester, N. Y.; The Lawyers Co-operative Publishing Co. 1907. Pp. clvi. 1120.

The different editions of this work have appeared at intervals of such length as to require in each instance important modification of the text and extensive addition thereto. Dr. Wharton first published the book in 1855, and not until twenty years later did he consent to bring out a new edition, and then only, apparently, because changes and developments had occurred to such an extent that dependence on the text of the original edition would have resulted in the application of rules no longer in accord with the more accurate psychological knowledge and humane sentiment accepted by the ablest courts. It is in this second edition that malice and intent appear to have become inferences of fact rather than presumptions of law, that insanity is recognized as a condition susceptible of infinite gradations, that to sustain an averment of an intent to kill the deceased, evidence of intent to kill a human being must be produced, and so on. This second edition was written along lines similar to the first edition, and the subject was developed in logical and philosophical fashion. The eminence of Dr Wharton, and the respect commanded by his productions are everywhere conceded.

The present edition differs in many more respects from its predecessors than new editions are wont to do. Certain portions of the old text are retained, but in large measure the whole subject has been rewritten, and a number of new chapters have been added. The cases are exhaustively cited, but the method evidences the type of the modern law book intended for use by the profession, approaching as it does towards the digest form of composition, rather than the